Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of Local Competition Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-98
Inter-Carrier Compensation For ISP-Bound Traffic	))	CC Docket No. 99-68

Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit

Reply Comments of

Keep America Connected
National Association of Development Organizations
National Black Chamber of Commerce
New York Institute of Technology
United States Hispanic Chamber of Commerce

August 4, 2000

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I. INTRODUCTION

The undersigned organizations are pleased to be able to submit to the Commission Reply Comments on the Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the District of Columbia Circuit.

Once again, we wish to express our concern that the current system of reciprocal compensation payments made by incumbent local exchange carriers (ILECs) to competitive local exchange carriers (CLECs) serving Internet Service Providers (ISPs) is creating economic distortions in the telecommunications marketplace that ultimately hurt consumers. ILEC reciprocal compensation payments amounting to billions of dollars (with this figure growing at an explosive rate) are subsidizing CLECs that are not committed to investing in new services and facilities that would better serve the public. This investment could and should include broadband deployment to those who currently fall on the wrong side of the digital divide.

While the Internet can connect neighbors or even family members within the same household, it is decidedly a global entity. As the Commission previously ruled, ISP-bound traffic should fall under interstate jurisdiction. Accordingly, reciprocal compensation should not apply to these calls. In the interest of promoting local telephone competition and promoting investment in the deployment of advanced services as supported by the Telecommunications Act of 1996, we again urge the Commission to end this outdated payment system as it applies to the Internet.

II. STATEMENT OF INTERESTS

Keep America Connected (KAC) is an organization comprised of groups whose demonstrated goals involve promoting a variety of telecommunications issues. The primary goal of KAC is that regardless of income, race, disability, age, ethnicity or geographical location, affordable access to the use of the modem telecommunications infrastructure and services should be available. This goal is best achieved through the rapid development of a fully competitive marketplace that ensures that consumers across the nation will have access to more services at lower prices.

National Association of Development Organizations (NADO) is a public interest group founded in 1967 to provide training, information and representation for regional development organizations in small metropolitan and rural America. NADO is the largest and leading advocate for a regional approach to community economic and rural development, including the deployment and upgrading of telecommunications facilities.

National Black Chamber of Commerce (NBCC) is a nonprofit, nonpartisan, nonsectarian organization dedicated to the economic empowerment of African-American communities. The NBCC has 188 affiliated agencies as members. Throughout the 1990s, African-American businesses in the United States posted sales of more than $32 billion annually. In general, African-Americans represent an annual spending base of over $500 billion. NBCC has harnessed much of the power of these dollars and provides unique opportunities for corporations and African-American businesses to partner in creating greater opportunity for all people.

New York Institute of Technology (NYIT) is a fully accredited, nonsectarian and nonprofit institution of higher learning that provides curriculums of education for undergraduate and graduate students. The Institute offers associate, bachelor's and masters degrees and a Doctor of Osteopathy. Courses range from art to architecture to science to engineering and medicine. The Institute maintains campuses on Long Island and in Manhattan.

United States Hispanic Chamber of Commerce (USHCC). The USHCC's primary goal is to represent the interests of over 1.5 million Hispanic-owned businesses in the United States and Puerto Rico. With a network of over 200 Hispanic chambers of commerce across the country, the USHCC stands as the pre-eminent business organization that effectively promotes the economic growth and development of Hispanic entrepreneurs.

III. REPLY COMMENTS

We support the Commission's jurisdiction over the issue of reciprocal compensation as it relates to Internet calls. At a time when the Internet is challenging the traditional telecommunications framework and greater direction by the Commission is needed, further jurisdictional debate will only create more regulatory confusion and inconsistency. Massachusetts, one of the leading states in the development of Internet technologies and their applications, has a large stake in the issue of reciprocal compensation. Yet, as the state's Department of Telecommunications and Energy stated in its filing "...our experience in Massachusetts demonstrates that clearer FCC direction - even if it means preemption - and less deference to states would be most helpful to us in resolving the controversial issues of reciprocal compensation for Internet-bound calls."[1]

At the same time, we disagree with the comments of the Florida Public Service

[1] Massachusetts Department of Telecommunications and Energy Comments on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, July 20, 2000, page 3.

Commission (FPSC) when they claim that "...state commissions are in a better position to address these issues because of [their] proximity to consumers, [and their] understanding of unique market conditions within [their] respective jurisdictions..."[2] If the FPSC had its finger on the pulse of consumers, it would realize that what they desire is a solution that, like their Internet connection, is dependable and cuts seamlessly across all borders. In its filing, even AT&T recognizes that "...there is no question the ISPs' services, and the LEC's carriage of ISP-bound traffic, are jurisdictionally interstate services."[3] (sic) However, we do find AT&T's position that ISP-bound traffic should be treated as "interstate" for jurisdictional purposes, yet "local" for purposes of reciprocal compensation to be inconsistent and self-serving, since it owns or controls a significant number of the CLECs that are reaping the windfall of ILEC reciprocal compensation payments.[4]

In spite of the issue of jurisdiction, the fact remains that the nature of an Internet call *is* different from that of a typical voice call that occurs between carriers. For example, without getting into the specific definitions of 'telephone exchange services,' it is clear that on average, Internet calls are of significantly greater duration than voice calls. It is also clear that ISPs rarely, if ever, have the occasion to "return" customer calls. Accordingly, any system of payments based on the traditional model of reciprocity

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[2] Florida Public Service Commission Comments on CC Docket No. 99-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 96-68, Inter-Carrier Compensation for ISP-Bound Traffic, July 21, 2000, page 5.

[3] AT&T Corporation Comments on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket 96-98, CC Docket No, 99-68, July 21, 2000, page 8.

[4] AT&T Corporation Comments on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket 96-98, CC Docket No. 99-68, July 21, 2000, page 11.

in telephone exchange services would be poorly suited in its application to this very asymmetrical paradigm.

Although it does claim state jurisdiction for reciprocal compensation, the Public Utility Commission of Texas aptly notes that "commercial negotiations, ***driven by market forces***, are the optimal means for establishing interconnection agreements (emphasis added)."[5] Indeed, companies such as Verizon have already begun to negotiate these agreements at rates lower than those previously dictated by reciprocal compensation. These efforts to get payments closer to real costs should be commended. However, they are an incomplete solution. As long as reciprocal compensation for ISP-bound traffic exists, CLECs (often established by the largest long distance providers) will continue to spring up and take advantage of what is, in effect, a regulatory loophole. These CLECs will also have a *disincentive* to acquire and serve customers who actually do make telephone calls that, in turn, will require their own outlay of reciprocal compensation payments. Moreover, they have little incentive for long-term investment in advanced services and in other benefits for consumers.

In the absence of reciprocal compensation, the same market forces that can drive commercial interconnection agreements can also provide CLECs with a way to recover their costs from their own consumers. As Verizon comments, "these carriers already can recover their costs in exactly the same way and to exactly the same extent as the

[5] Public Utility Commission of Texas Comments on Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, 99-68 (FCC 00-227), July 18, 2000, page 6

incumbent – through the business line or other rates they charge to ISPs."[6] In addition to the 'bill and keep' model, other payment systems could be arranged that do not stifle competition in the local market. We support BellSouth in their comments that "[t]he overwhelming interstate nature of the traffic that traverses ISP connections provides a compelling reason for the Commission to establish an interstate mechanism that controls inter-carrier compensation associated with ISP connections."[7]

While companies such as WorldCom attempt to make their case for reciprocal compensation based on proceedings as far back as 1980,[8] it is time for the Commission to rethink telecommunications regulation based on the present (and future) landscape. Designed in an era when the Internet was in its infancy, the current system of reciprocal compensation payments for Internet-bound traffic is not working.

The Commission has reviewed this issue in another context. Initially, calls to the Internet were considered to be analogous to long distance calls in that a person dialed from a local company and that call would be passed to another carrier and eventually handed off to the Internet. The Commission was concerned that if ISPs had to pay per minute access charges like those of long distance carriers, the growth of ISPs and the Internet would be stunted. The Commission ultimately exempted ISPs from paying access charges. By doing so, the Commission implicitly acknowledged that calls to the

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[6] Verizon Communications Comments on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, CC Docket No. 99-68, July 21, 2000, page 23.

[7] BellSouth Corporation Comments on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, CC Docket No. 99-98, July 21, 2000, page 19.

[8] WorldCom, Inc. Comments Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, July 21, 2000, page 28.

Internet were interstate.[9] However, reciprocal compensation payments to CLECs serving ISPs – based on the premise that these are "local" calls - has skewed the Commission's rationale.

ILECs will pay more than two billion dollars this year in reciprocal compensation payments to CLECs to connect calls to ISPs and this figure is growing. We are concerned that the current reciprocal compensation scheme will result in per minute usage charges to consumers. As noted in the deliberations by the California Public Utilities Commission's deliberations on Pac West's request for such payments from Roseville Telephone Company (a small independent local exchange company in California), Roseville Telephone Company stated:

> If the Commission orders reciprocal compensation in this proceeding, Roseville should be able to pass through these charges from Pac West to the end user customer...Therefore, Roseville proposes that reciprocal compensation charges be 'passed through' to the end-user customer who is responsible for the generation of reciprocal compensation charges for these calls.[10]

The Commission must not allow the requirement of reciprocal compensation payments for calls to the Internet to continue. As the Roseville Telephone Company has stated, the user of the Internet will be harmed, not the CLECs. Consumers should not be penalized by having to make per minute payments to telephone companies for using the Internet; however, something has to give, and the pressure for per minute charges for Internet calls is mounting.

The goals of the Act are not being met. CLECs offering few, if any, value-added services for consumers are proliferating across the country, artificially propped up by

[9] Testimony of Thomas Tauke before the House Commerce Committee, subcommittee on Telecommunications, Trade and Consumer Protection, June 22, 2000, p.2.
[10] Testimony of Greg R. Gierczak on Behalf of Roseville Telephone Company before the California Public Utilities Commission, Docket No. A. 00-05-021, June 6, 2000, p. 32

reciprocal compensation revenues that far exceed true costs. If the ILECs are required to continue to make these payments, they may eventually be forced to recoup their losses from their traditional consumer customer base. Consumers should not have to subsidize ISPs' cheap CLEC connections, nor the existence of the CLECs themselves. Ironically, those who will be hurt the most by this are those who could most greatly benefit from the investment of this capital in advanced services. This includes persons with disabilities that utilize advanced telecommunications services, small businesses and the disconnected who are presently being by-passed by the information superhighway (small urban, rural and inner city areas).

The elimination of reciprocal compensation payments for Internet-bound traffic will be one step toward a more current, market-oriented telecommunications environment. Regulation that governs traditional telecommunications services need not be scrapped, but the Commission should recognize when change is needed. With a more economically efficient marketplace and a greater investment of resources in advanced services, the potential of the Internet age may then begin to be realized.

The undersigned urge the Commission to clarify this issue and ensure that calls to an ISP are deemed to be interstate and not subject to reciprocal compensation payments. It is time to do away with this aberration that is destroying incentives for true competition in the telecommunications marketplace.

Respectfully submitted by,

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